

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the matter of)
Billed Party Preference)
for 0+ InterLATA Calls)

CC Docket No. 92-77 ✓

COMMENTS OF INTELICALL, INC.

ORIGINAL
FILE

INTELLICALL, INC.

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SUMMARY

The Commission should not order implementation of billed party preference ("BPP"). There is no merit to claims that BPP is somehow needed to provide consumers an easy means of selecting their preferred 0+ carrier. Consumers already can achieve this result by dialing an access code, and just last year the Commission determined that access code dialing "has met with a high degree of consumer acceptance." BPP adds nothing to this equation. BPP actually will harm consumers by injecting confusion and delay into every 0+ call, increasing the price of 0+ services and reducing competition and technological innovation in the 0+ marketplace.

The most immediate and devastating impact of BPP will be felt by entrepreneurs who provision 0+ and enhanced services through "smart CPE." The technologically advanced capabilities of such CPE enable 0+ and enhanced services to be provisioned within these instruments themselves, without the need or expense of using network-based capabilities. Intellicall, its customers and others have invested hundreds of millions of dollars to develop such CPE and deploy it in the marketplace, where it is benefiting consumers by expanding their calling and service options. All that investment and consumer benefit will be wiped out if BPP is adopted because no matter how much beneficial intelligence is engineered into CPE, BPP renders such intelligence useless.

In addition to undercutting technology innovation incentives, BPP is severely anti-competitive. By government fiat, the LECs will be granted a stranglehold on the intraLATA 0+ market, and the

interLATA 0+ market will be handed over to carriers that provide service on a nationwide basis. Private pay telephone owners will be driven out of the marketplace. As a result, consumers will have fewer and worse 0+ service options.

Since access code dialing already provides consumers the ability to select their carrier of choice in most instances, and likely will become ubiquitously available in the time it would take to deploy BPP, every penny spent on BPP is deadweight efficient loss and an unnecessary burden on ratepayers. Imposing such costs on the public is unsound public policy. Moreover, it diverts the Commission's attention from resolving far more important pay telephone and operator services issues, such as eliminating anti-competitive calling card practices and ending the currently asymmetrical regulation of LEC and competitive pay telephones. Addressing these issues will bolster competition and benefit consumers in the 0+ market to a far greater extent than wasting time and resources on BPP.

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INTRODUCTION

Intellicall, Inc. ("Intellicall"), by its attorneys, files these comments in response to the Commission's May 1992 Notice of Proposed rulemaking in the above-captioned proceeding. See Billed Party Preference for 0+ InterLATA Calls, FCC 92-169, released May 8, 1992 ("Notice"). In the Notice, the Commission asked interested parties to address whether and how local exchange carriers ("LECs") should be required to implement a "billed party preference" system of handling interLATA 0+ calls. Under BPP, LECs would be inserted by government fiat into the processing of some but not all 0+ calls. Intellicall will demonstrate herein that BPP implementation is unsound public policy that will harm consumers, competition and technological innovation. Therefore, Intellicall urges the Commission to proceed no further with BPP implementation proposals.

I. STATEMENT OF INTEREST

Intellicall is the leading provider of equipment to the Customer Owned Pay Telephone Service ("COPTS") industry. It has

manufactured over 135,000 "smart" pay telephones for use in 46 states and provides various ancillary services to its customers, including access to suppliers of billing, collection and validation services necessary to the conduct of its customers' business.

Specifically, Intellicall pay telephones utilize "store and forward" technology that obtains billing information from customers for non-sent paid calls ^{1/} which is then stored in the phone. The pay telephones contain computer chips that use tone and voice prompts to instruct the caller to input credit information or collect call billing options. The micro-circuitry records the billing information and subsequently downloads the information upon command to COPTS providers. The provider then uses various tables to rate the calls and forwards its records through one or more billing clearinghouses to local exchange carriers ("LECs") for billing and collection. A more detailed description of Intellicall's technology is attached hereto as Exhibit 1.

Through this set based technology, pay telephone providers are able to offer both operator services and enhanced services to consumers in competition with the LECs and traditional network based providers of operator services. This competition has resulted in direct benefits to consumers and competitors alike;

^{1/} A "non-sent paid" call is one paid for by use of a calling card or commercial credit card, or charged to the called party (i.e., collect) or a third party. A "sent paid" call is paid for by coin at the time the call is placed.

though its participation in this proceeding, Intellicall is attempting to preserve these benefits for future generations.

ARGUMENT

II. CONSUMERS AND COMPETITORS WILL BE HARMED BY THE ENORMOUS SHORTFALL BETWEEN THE MYTH AND THE REALITY OF BPP

A. BPP Is An Outmoded Regulatory Solution In Search of A Problem; TOSCIA Already Ensures Consumers That They Can Select A Carrier Other Than The Carrier to Whom the Pay Phone Is Presubscribed

The telecommunications industry continues to transition from a monopoly to a competitive environment as a result of pro-competitive regulatory policies and technological innovations that have lowered barriers to competitive entry. Most of the FCC's policy efforts for the last 30 years has been devoted to accelerating such forces. Requiring BPP implementation under the guise of ending "customer confusion" would be an abrupt and total departure from this de-regulatory pro-technology approach, and a return to the 1940s-style, paternalistic regulatory philosophy that favors monopoly over competition. The Commission would again be setting industrial policies rather than letting consumer demand shape the course of market and technological development. Such a return would undercut the benefits the FCC has achieved in operator services and pay telephone competition, by concentrating control of the 0+ market in the hands of very few network based IXCs and LECs.

Attempts to put the competitive genie back in the monopoly bottle might be defensible if market failure existed and it was

necessary to protect consumers, but only then. No such market failure exists. The sole ostensible justification for BPP is to permit consumers to automatically access a carrier of their choosing when making a 0+ call. Yet, even when Bell Atlantic filed its original BPP rulemaking petition in 1987, consumers already had numerous options for accessing a carrier of their choosing through the use of 800, 950 or, in many cases, 10XXX-0 access codes. Thus, there has never been a substantial technical barrier to freedom of choice in the 0+ marketplace and no market failure.

There are even fewer technical barriers today. Enactment and implementation of the Telephone Operator Consumer Services Improvement Act ("TOCSIA") have eliminated any shred of excuse for BPP. ^{2/} The statutory TOCSIA requirement that 800 and 950 dialing conventions be unblocked at all aggregator locations has been in effect for 18 months. In a rulemaking proceeding initiated pursuant to TOCSIA, the Commission has ordered OSPs to acquire 800 or 950 capacities sufficient to enable their customers to access

² See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 6 FCC Rcd 4736 (1991) ("Access and Compensation Order"). Some people have argued that competition in operator services denied consumers their choice of carrier. The lack of information about the onset of competition in operator services did cause consumer confusion, as consumers were unaware of different rates and services offered by multiple providers that resulted from the removal of entry barriers in operator services provisioning. AT&T concomitantly initially declined to inform its customers as to how to reach them by means other than "0." With the posting, rate quotes, and informational tariffs required by Congress, the FCC, and the marketplace, there is no rational argument that consumers' choice of carrier is constrained.

OSPs through such dialing conventions. ^{3/} The Commission also has ordered the unblocking of the 10XXX dialing convention at all aggregator locations by March 1997, and at all pay telephone locations on a much more accelerated timetable. ^{4/} Thus, although 10XXX dialing is not available everywhere today, it is on course to be made available in the time frame contemplated for BPP deployment -- and at far less total cost than BPP. As a result of these actions, there is no longer any doubt that consumers are able to reach their preferred carrier from any aggregator location. This fact obliterates the ostensible justification for BPP.

Today, the industry is nearing the conclusion of a lengthy and complex process of implementing the TOSCIA regulatory framework that ensures consumer choice and competitive equity in the "0" marketplace with regard to access issues. Carriers and aggregators have spent millions of dollars to comply with the reporting, posting, branding, and tariffing components of that framework, as well as the 800/950 capability requirement. Millions more are already committed to finishing the tasks of unblocking 10XXX and educating consumers on how to exercise their freedom of choice through access dialing. Adopting BPP at this

^{3/} Id., 6 FCC Rcd at 4744.

^{4/} Id. After initially ordering the unblocking of 10XXX at all pay telephone locations by March 1992, the Commission stayed the effectiveness of that order temporarily pending reconsideration. The Commission recently indicated publicly that it will shortly lift the stay and order 10XXX unblocking at pay telephones to proceed immediately. See FCC NEWS, Rpt. No. DC-2144, Released Jun. 25, 1992.

time would amount to pouring all these activities and expenditures down the drain.

Moreover, there is no reason to believe that the pro-monopoly, heavy-handed regulatory approach represented by BPP is superior to the pro-competitive approach represented by TOSCIA. Just the opposite is true. The Commission abandoned monopoly-oriented regulation decades ago after concluding that it did not serve the public interest. The demonstrated success of the Commission's pro-competitive policies since then is proof of the wisdom of this conclusion. The Commission should not attempt to turn the clock back by implementing BPP.

B. BPP Will Deprive Consumers of the Benefit of Technological Innovation

The Commission is seeking comment on whether BPP will have a negative impact on technological development in the pay telephone industry, and in particular, on the use and further development of "smart" pay telephone equipment. See Notice at ¶ 28 and n. 39. The Commission is right to be concerned about the negative impact on technological development BPP will have, but its focus is too narrow. It fails to recognize that pay telephone providers themselves offer operator services through technology incorporated in the pay telephones. These pay telephone providers are thus themselves operator service providers, and compete with network based operator service providers for customers, in the same manner that PBX and Centrex offerings compete with one another. In addition to totally realigning network based operator services

competition, BPP will eliminate the provision of operator and other enhanced services by set-based providers, thus depriving consumers of technological and service benefits that set-based operator services competition has brought. 5/

Perhaps the most obvious of the benefits has been the introduction of new services. See Exhibit 2 for Intellicall Technology Timeline. For example, Intellicall introduced automated collect services in 1989, allowing consumers to place calls without the intervention of a live operator. These advances were extended to the institutional environment, where previously pay telephone services to inmates was generally limited because the ability to access a live operator also gave prisoners additional means to place fraudulent calls.

More recently, Intellicall and others also pioneered voice messaging services from pay telephones. Through technology in the pay telephone which allowed pay telephone provider to know whether the call had been answered, set-based pay telephone providers were able, first, to offer callers the ability to leave a message for the person they were calling, which the "message center" would then attempt to deliver at selected intervals. These services were pioneered, and introduced through set-based technology. Consumers benefited, and continue to benefit from the growing number of these new services by set-based providers.

5/ It is this competition in set-based operator service that transformed pay telephones from "black boxes" (e.g., the old equivalent of a black rotary dialed phone) into a service terminal, offering consumers a growing selection of services from which to choose.

But, as it should in a competitive environment, the development and introduction of these new services has also provided a competitive spur to network-based providers, many of whom have subsequently introduced network based services which mimic the advances already present in set-based pay telephone provisioning. For example, some Bell Operating Companies (e.g., Pacific Bell and BellSouth) have begun to deploy automated collect calling capability. AT&T has very recently introduced voice messaging services from pay telephones it serves. ^{6/}

But the story does not need to end here. If set-based competition is permitted to continue, then these innovations are just the beginning of the new service offerings which may become available from CPE-based and network based providers of services. Elimination of competition from set-based providers, and thus elimination of the competitive spur they provide, would be the equivalent of eliminating, for example, PBXs. Yet if the Commission adopts BPP, that is exactly what it will have done.

BPP, by design, would bypass the pay telephone intelligence. Instead of being able to offer consumers the opportunity to place an automated collect call from a pay telephone, the call would be routed to the local exchange company for initial handling. Instead of the pay telephone provider being able to offer voice messaging service to the calling party, the caller will be able to

^{6/} To the extent this service is available, it is still generally dependent on the calling party directing the busy/no answer condition, and placing a second call to a message delivery service; a clearly inferior and less convenient approach than that offered by private pay telephone providers through smart technology.

utilize only those services offered by the network based carrier over whom the LEC routes the caller's call. ^{7/} As the pay telephone provider will have no control over the call, it will have an ability to offer these services.

BPP is the functional equivalent of a ban on using smart CPE. Since BPP requires 0+ calls to be routed to a LEC for processing, that system destroys any rationale for building call processing functions into CPE. For the same reason, BPP reduces the incentive to build enhanced services capabilities such as voice messaging capability into CPE. Such capabilities operate as an adjunct to the provision of basic services. If equipment cannot be used to provision basic services, such as 0+, the marginal additional revenue from enhanced service provisioning even if it were technically possible to provide is not sufficient to warrant investing in the equipment.

As a result, BPP would lay to waste the countless hours and hundreds of millions of dollars spent on smart CPE research, development and deployment since 1984. Moreover, it would undercut incentives to engage in further research and development. It is irrational to expect anyone to invest in smart CPE R&D when BPP chokes off opportunities to obtain a reasonable return (or any return) on such investment. This will reduce innovation and

^{7/} Provision of the service is dependent on the PPTO having control of the call (and the billing mechanism, whether coin or credit) so that the condition of the called number can be ascertained and the service offered, all automatically. Under BPP, the PPTO's automated service would only be available on 1+ calls -- for 0+ calls there might be no such service available or a more expensive and less convenient non-automated version.

competition in the CPE, 0+ and enhanced services industries. Those who ultimately benefit the most from such activities -- consumers -- will suffer as a result.

C. BPP Will Frustrate and Burden Consumers

Congress and the Commission have spent years developing 10XXX unblocking requirements based on their determinations that consumers are demanding to use this dialing convention to make 0+ calls and are frustrated when it is not available. See Access and Compensation Order, 6 FCC Rcd 4736 (1991). Less than one year ago, the Commission concluded that 10XXX dialing "is the most efficient access method for consumers to use in reaching their preferred operator service providers." 6 FCC Rcd. at 4738. The Commission also concluded then that 10XXX dialing "has met with a high degree of consumer acceptance," and is superior to alternative access methods that lengthen call processing time and require consumers to deal with multiple prompts from OSPs (as would be required under BPP). Id. at 4739. 8/

8/ There is no obvious explanation for the abrupt turnaround in the Commission's thinking regarding 10XXX calling, and the Commission is required to provide one. See Motor Vehicles Manufacturers Association v. State Farm Mutual, 103 S.Ct. 2856, 2866 (1983). Moreover, it is reasonable to conclude that if the choice of a particular carrier is important to a consumer (for whatever reason), that consumers will memorize the digits needed to make that choice, whether 10XXX, 950XXX or 800XXXXXXX. Such a consumer already dials a minimum of 25 digits when making a 0+ call (0+, plus a 14 digit calling card number, plus the 10-digit called number). The additional effort required to dial 10XXX is infinitesimal when compared to the additional confusion, cost and service degradation consumers will experience under BPP.

In an abrupt turn-about, the Commission is now considering BPP based on its belief that consumers will be able "to make all of their operator-assisted calls on a 0+ basis, and they could do so with the knowledge that their call would be automatically handled by the OSP with which the billed party wishes to do business." Notice at ¶ 16). ^{9/} But BPP will not assure either of these goals. Neither the existing nor future networks will allow the Commission its apparently preferred result.

Patchwork BPP deployment will prevent consumers from ever being in a position to utilize BPP on all their 0+ calls. Less than full BPP deployment is guaranteed by many factors. There are no plans for nationwide installation of the equal access and SS7 technology needed to make BPP available ubiquitously. Nor can the Commission order such investments throughout the country. The Commission's jurisdiction over 0+ facilities and services is limited to those in the interstate arena. See 47 U.S.C. 152. It cannot order nationwide BPP implementation because it is technically possible to segregate inter- and intrastate 0+ services and facilities; therefore, the legal prerequisite for exercise of the Commission's preemption authority does not exist. See Louisiana Public Service Commission v. FCC, 476 U.S. 355, 368 (1986). Further, it is highly unlikely that public service

^{9/} This construct continues to assume a fact not in evidence, that is, that access code dialing is an impediment to consumers' placing calls when away from their home or office. This just is not true. Consumers have readily accepted dialing additional digits, e.g., 10XXX, when they prefer to use a carrier other than the one to whom a pay telephone is presubscribed. See Access and Compensation Order, 6 FCC Rcd at 4739.

commissions ("PSCs") in all 50 states and the District of Columbia would individually order BPP implementation, and certain state PSCs even appear to lack authority to take such action. 10/

Patchwork deployment, whatever its cause, guarantees that BPP will increase, not decrease, the confusion and inconvenience of making 0+ calls. Moreover, as the following examples demonstrate, consumers would face multiple confusing calling scenarios even if the Commission's proposed BPP plan (all interLATA 0+ calls) could be implemented overnight:

Example: LEC Pay Telephone Result*

Type of Call

0+ interstate	Consumer's Presubscribed Carrier (if in equal access area; otherwise ?).
0+ intrastate, interLATA	Carrier Presubscribed To Originating Line.
0+ intrastate, intraLATA	LEC Serving Originating Line.
0+ local	LEC Serving Originating Line

*consumer can always reach preferred carrier
by dialing an access code.

10/ In any event, BPP implementation at the state level would require 51 separate PSC proceedings. Such proceedings likely will be contested by OSPs that would stand to lose the significant investments they have made in facilities and certifications at the state level. Therefore, even if there were no technical barriers to BPP implementation, the legal barriers alone guarantee that BPP deployment at the state level would be, at best, a lengthy process.

Example: Private Pay Telephone Result*

Type of Call

0+ interstate	Customer's Presubscribed Carrier (if in equal access area; otherwise, ?).
0+ intrastate, interLATA	Carrier Presubscribed To Originating Line.
0+ intrastate, intraLATA	Carrier Presubscribed To Originating Line (if intra- LATA OSP competition authorized by state PSC); or Carrier Selected By Owner Of "Smart" Pay Telephone (if COCOT competition but not OSP competition authorized by state PSC).
0+ local	LEC Or Carrier Presubscribed To Originating Line (depending on PSC rules).

*consumer can always reach preferred carrier
by dialing an access code.

These examples of the most basic possible calling permutations confronting consumers in the BPP environment proposed in the Notice demonstrates why BPP will not "guarantee" consumers anything but confusion. Moreover, since consumers will have no way of knowing when BPP routing is available, they will have to check on every call. This will not be easy to do. It is unlikely that such difficulty can be alleviated by information posting (i.e., notice) requirements. As a practical matter, such requirements are limited by the amount of space available on pay telephones and other aggregator equipment. Even if space were unlimited, consumers do not understand the concepts or terminology

on which such notice would need to be based (i.e., LATA boundaries). 11/

Even if a consumer determines that BPP is available, and is sufficiently knowledgeable to figure out whether BPP affects the processing of the particular type of 0+ call he or she is attempting to place, BPP will turn out to be no bargain. Consumers will discover that they have lost the convenience of using a commercial credit card to make 0+ calls; that they have to deal with multiple operators on every call; that it takes longer to make a call; and that calls cost more. Only under Orwellian logic can this result be characterized as pro-consumer.

D. BPP Is Anti-competitive

The Commission ascribes multiple, pro-competitive benefits to BPP. According to the Commission, BPP will promote competition by eliminating presubscription and compensation in the 0+ marketplace, thereby focusing competitive efforts on end-users; and will expand competitive opportunities for regional carriers. See Notice at 19-20, 23-24. The Commission's analysis reflects a serious misperception of the nature and operation of the 0+ marketplace.

The 0+ marketplace exists as the result of consumers' demand for telecommunications products when they are away from home.

11/ Consumer notification requirements relating to access codes already are in place at aggregator locations, and access code dialing is available in every jurisdiction. The likely result of such advantages is that consumers who have a preference for one carrier over another will continue to rely on access codes, regardless of the availability of BPP.

Companies offering service in this market operate on the same basis as any retail business. They make equipment and/or services available for purchase, and consumers are free to choose whether to buy them. ^{12/} Due to the FCC's pro-competitive decisions to deregulate CPE, authorize private pay telephone provisioning, and permit long distance competition, barriers to entering the 0+ market are low. Large and small companies alike can enter the 0+ market and provision service on a national, regional or local basis.

BPP will alter this structure drastically and make the 0+ market substantially less competitive. It is fallacious to claim that local or regional carriers could survive under BPP. Under the system proposed in the Notice, OSPs will need to either issue their own calling cards or participate in the presubscription process in order to provisioning 0+ service to anyone. Nationwide operations are a prerequisite to such activities, and it is easy to see why. Assume a 0+ carrier operates only in the District of Columbia. The bulk of that carrier's customers do not live in that city; they live elsewhere. If such a carrier can serve customers only by having them presubscribe to its services or use its calling card, then that carrier would have to distribute cards nationally and/or participate in the presubscription process in

^{12/} As discussed elsewhere in these comments, TOSCIA and related Commission regulations provide strong consumer protections within the 0+ market. Consumers are guaranteed the means of determining the identity of 0+ service providers and the price of their services. Congress and the Commission also have ensured that the technical capability consumers need to access the 0+ service provider of their choice is available at any public location where 0+ service is provisioned.

every LATA in the country. Doing so only in, say, California or Utah (or anything other than nationwide) would be nonsensical because the carrier could not hope to build a customer base large enough to cover its expenses. Under such conditions, a carrier's service quality and business acumen would be irrelevant. Size alone would be the key to market success or failure. In the face of such a huge barrier to market entry, local and regional carriers would be wiped out and, consequently, the number of 0+ carriers would drop precipitously.

It is equally fallacious to suggest that BPP will eliminate commission payments and thereby focus competition on end-users. In the first place, 0+ competition already is focused on providing quality service to the public, and 0+ carriers who lack such focus do not remain in the market for very long. The revenues that premises owners receive from OSP commission payments is a marginal aspect of their overall business operations, and it would be economically irrational for them to damage their primary revenue streams by allowing customers to be driven away by poor OSP service quality. Rather than sustain such revenue losses, premises owners simply terminate the OSPs' contract. Thus, market incentives effectively ensure that consumers remain the focus of 0+ competition. BPP adds nothing to this equation.

In the second place, BPP will not eliminate commission payments. Commissions have always been an integral part of the 0+ marketplace. AT&T and the LECs paid "commissions" to premises owners long before the advent of competition, although they euphemistically referred to them as "space rental" or "property

maintenance" payments. Until recently, these payments were held to uneconomically low levels by the absence of competition. This situation was not publicly beneficial, it merely forced an income transfer from premises owners to AT&T and the LECs. The advent of competition has curtailed this income transfer and injected economic rationality into the 0+ marketplace by ensuring that the price of 0+ services accurately reflect their provisioning costs. Accurate cost/price alignment has been one of the Commission's fundamental regulatory goals for decades. ^{13/} No one has supplied a rational justification for departing from that goal in the 0+ marketplace.

BPP's only impact on commission payments will be to curtail some, but not all, OSPs' ability to pay them. We turn to this subject in the next section of these comments.

**E. BPP Works Its Harshest Anti-competitive Result
On Private Pay Telephone Providers**

The Commission initiated pay telephone competition in 1984 with the expectation that competition in this area, as elsewhere, would benefit the public by promoting consumer choice and technological innovation. See e.g., Pay Telephone Registration Order, FCC 84-270, 49 Fed Reg 27,763 (July 6, 1984); Tonka Tools, 58 RR 2d 903, 904-906 (1985). This prediction has proven to be correct. Consumers today enjoy a wider range of pay telephone service options at a greater number of locations than ever before. BPP threatens to eliminate these consumer benefits by severely

¹³ See e.g., MTS/WATS Market Structure, 93 FCC 2d 241, 251-52 (1983).

curtailing private pay telephone owners' ("PPTOs'") ability to compete.

Pay telephone competition consists principally of a battle between PPTOs and LECs for the right to place their equipment at aggregator locations. The LECs enter this fight with numerous advantages that they obtain not by superior business acumen but, instead, solely as the result of their position as monopoly providers of network services and asymmetrical regulatory policies. These advantages include the LECs' ability to recover all their costs from captive ratepayers and to protect themselves against losses from fraudulent calling while concomitantly denying such protection to PPTOs.

Pay telephone providers compete against each other by offering "commissions" to aggregators in exchange for the right to locate equipment at their premises. Here, too, LECs enjoy a substantial competitive advantage, granted by regulators, over PPTOs. LECs' commission payments are derived from many different non-pay telephone revenue sources, including general revenue accounts. In contrast, the income generated at a particular pay telephone location generally is a PPTO's only source of commission revenue. BPP will exacerbate the LECs' existing advantage in two respects. First, the revenues LECs gain from being inserted into every 0+ call by the FCC-imposed BPP system will vastly increase the funds available to them for commission payments. Second, PPTOs will have less revenue available for commission payments because BPP will deny them the opportunity to process 0+ calls.

The PPTO revenue losses and LEC revenue gains resulting from BPP will grant LECs an overwhelming competitive advantage in the battle for aggregator locations. The LECs have acknowledged that the pursuit of this advantage -- not a desire to compete for customers -- is the driving force behind their support for BPP. See, e.g., Bell Atlantic Telephone Companies Petition For Rulemaking To Establish Billed Party Preference, filed April 13, 1988, at 2, 8. If the LECs succeed in gaining this advantage, the prospect of robust pay telephone competition will be foreclosed.

Consumers will not benefit from this result. As discussed previously, PPTOs pioneered store-and-forward technology, automated collect, voice messaging and recognition technology, and specialized prison services. Each advance pushed PPTOs' competitors to introduce similar technology and services. Consumers are reaping the benefits of these advances. The emergence of competitive alternatives has greatly increased the number and location of pay telephones. This is not a "cream skimming" phenomenon. For example, evidence submitted to the Commission by Intellicall in previous filings demonstrates that PPTOs deploy 40 percent of the pay telephone equipment located in disadvantaged areas in the State of New York, and that between 70 and 80 percent of PPTO equipment in California is located in previously unserved areas. ^{14/} These consumer benefits will be lost if BPP is implemented.

^{14/} See Intellicall Comments In Support of Emergency Motion, CC Docket No. 91-115, filed Feb. 10, 1992, at 10 & Attachment B.

This scenario sounds apocalyptic -- and it is. There is no doubt that pay telephone competition will be curtailed severely under BPP. It will turn back the clock to the days when PPTOs were extremely small-scale retail establishments that existed merely to collect a few quarters on sent-paid calls. This will eviscerate the majority of PPTO businesses, which are high-technology entrepreneurial operations engaged in the 0+ and enhanced services markets, and which are almost totally dependent on pay telephone revenues for the further development of their businesses. There is no rational public policy justification for this result.

**F. BPP is Highly Inappropriate in the
Correctional Institution Environment**

Even if were legally and technically possible to implement BPP ubiquitously, there are market niches where such implementation obviously would be contrary to the public interest. The correctional institution environment is one example.

BPP would disturb the balance of competing considerations that confinement institution administrators must strike in providing confined individuals with access to telephone service. Administrators often are legally obligated to provide such access. At the same time, they need to: (1) Maintain an orderly environment; (2) reduce administrative costs; (3) avoid the placement of harassing telephone calls to the general public and law enforcement officials; and (4) prevent fraudulent use of institutional phones.

Many administrators and/or state regulators attempt to strike this balance by making pay telephones available to institutional populations under the following conditions: (1) automatic termination of telephone service after a preestablished time; (2) programming in order to block access to certain numbers, including directory assistance, emergency numbers (such as 911), and local law enforcement officials; (3) blocked access to live operators; (4) collect-only calling; and (5) blocked access to interexchange carriers ("IXCs") through 800, 950 or 10XXX-0. Extending BPP to the confinement institution environment would prevent any of these requests from being satisfied because LECs currently do not possess the required call processing capabilities. This would leave prison administrators and those providers serving them with a Hobson's choice -- either terminate inmate access to telephone service in possible violation of legal requirements, of the Act, or allow unlimited 0+ access by inmates to the public switched network. Either choice is intolerable. In order to prevent these inhumane or potentially unsafe results from occurring, the BPP cannot be implemented in the correctional institution environment.

III. IMPLEMENTATION PROBLEMS ILLUMINATE THE IRRATIONALITY OF BPP

A. BPP Will Be Prohibitively Expensive

The Notice summarizes cost data relating to BPP implementation that was submitted in previous comment rounds, and the Commission is seeking additional cost information. See Notice at ¶ 25. Intellicall will withhold comment on these estimates